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10/658,682	09/09/2003	David W. Plank	GMI0012/US	2267

33072 7590 04/17/2008  
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EXAMINER
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WONG, LESLIE A

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/658,682  
Filing Date: September 09, 2003  
Appellant(s): PLANK ET AL.

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Dale A. Bjorkman  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed January 8, 2008 appealing from the Office action mailed April 4, 2007.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

No amendment after final has been filed.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

5,780,089	Lee	7-1998
6,287,603	Prasad et al.	9-2001
JP 55-345042	3-10-1980	

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-12, 21, and 22 stand rejected under 35 U.S.C. 103(a) as being unpatentable over JP 55-34042, Lee (US 5780089), and Prasad et al (US 6287603).

JP 55-34042 discloses the addition of cyclodextrin to butter and/or butter oil, and emulsification with water (see abstract).

Lee discloses a flavor composition comprising a fat/oil flavor and cyclodextrin (see entire document, especially the Examples).

Prasad et al disclose a cyclodextrin flavor delivery system, wherein the cyclodextrin serves to improve food texture (see entire patent, especially column 2, lines 42-48).

Improvement of flavor and textural stability would be no more than obvious to that of JP 55-34042, Lee (US 5780089), and Prasad et al (US 6287603) as the same components are used.

The claims differ as to the specific application (topical, after heat treatment) and the delivery of the cyclodextrin in the absence of additional ingredients other than fat.

Once the art has recognized the use of cyclodextrin with flavors to provide stability, the use and manipulation of the cyclodextrin would be no more than obvious to a person of ordinary skill in the art. The decision as to when to add the cyclodextrin would be case specific and easily determined by the ordinary worker. Furthermore, a flavor powder as taught by both Lee (column 2, lines 42-49) and Prasad et al (column 5, lines 27-37) could easily be incorporated into a food prior to heat treatment, added topically at any time, or incorporated or topically added after heat treatment. Applicant attaches no criticality to the delivery of the cyclodextrin in the absence of additional ingredients other than fat. The presence or absence of additional components at the time of addition is merely a matter of choice. The prior art has recognized the ability of cyclodextrin to provide stability. Its use and manipulation in other foods would be no more than obvious to one of ordinary skill in the art.

It would have been obvious to a person of ordinary skill in the art, at the time the invention was made to use any type of application (i.e. incorporated into a food prior to

heat treatment, added topically at any time, or incorporated or topically added after heat treatment) because the use of cyclodextrin to provide stability is well-known in the art.

#### **(10) Response to Argument**

Appellant argues that JP 55-34042 is directed to an ice cream product and that the product of JP 55-34042 contains an additional ingredient within the cyclodextrin structure.

JP 55-34042 teaches the addition of cyclodextrin to butter and/or butter oil, and emulsification with water, wherein the formed emulsion is used as a raw material of cream (see abstract). Appellant discloses butter as a contemplated fat (see page 7, lines 13-15) which is the same as that of JP 55-34042. As defined by Appellant's disclosure, JP 55-34042 teaches no additional ingredients contained within the cyclodextrin structure.

Appellant argues that Lee teaches that the cyclodextrin carries a flavorant into the food product.

Lee teaches a composition comprising a fat/oil flavor and cyclodextrin, wherein the fat is oleic acid (see entire document, especially the Examples). Lee teaches the combination of cyclodextrin and a fat as is claimed. It is further noted that Applicant's disclosed fats, such as olive oil and butter, inherently have flavor.

Appellant argues that Prasad et al is directed to a liquid.

Prasad et al is cited to teach the conventional use of cyclodextrin as a delivery system in food products.

Once the art has recognized the use of cyclodextrin to provide stability, the use and manipulation of the cyclodextrin would be no more than obvious to a person of ordinary skill in the art. The decision as to when to add the cyclodextrin would be case specific and easily determined by the ordinary worker. Furthermore, the claimed cyclodextrin complex could easily be incorporated into a food prior to heat treatment, added topically at any time, or incorporated or topically added after heat treatment. Applicant attaches no criticality to the delivery of the cyclodextrin in the absence of additional ingredients other than fat. The presence or absence of additional components at the time of addition is merely a matter of choice. The prior art has recognized the ability of cyclodextrin to provide stability. Its use and manipulation in other foods would be no more than obvious to one of ordinary skill in the art.

With respect to claims 6-11, 21, and 22, Appellant argues that the prior art does not teach a method of improving crispness stability.

In response to applicant's argument that the prior art does not teach a method of improving crispness stability, a recitation of the intended use of the claimed invention must result in a structural difference. If the prior art structure is capable of performing the intended use, then it meets the claim. The prior art teaches cyclodextrin as a delivery/stability system for foods in general. Specifically, a cyclodextrin containing fat, as taught by the prior art and as claimed, would serve to improve/maintain crispness.

All of the prior art is cited to teach the conventional use of cyclodextrin to provide stability as is claimed. In the absence of unexpected results, Appellant is using known components to provide no more than expected results.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Leslie Wong/  
Primary Examiner, Art Unit 1794

Conferees:

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